

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MELANIE LURA SMITH,

Plaintiff,

09-CV-470

V.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

**Thomas J. McAvoy,
Senior United States District Judge**

DECISION and ORDER

This matter was referred to the Hon. Victor E. Bianchini, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. In a Report and Recommendation dated November 4, 2011 ("Report-Recommendation"), Magistrate Judge Bianchini recommended that Plaintiff's Motion for Judgment on the Pleadings be GRANTED, that Defendant's Motion for Judgment on the Pleadings be DENIED, that the decision of the Commissioner be reversed, and that the case be remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405 (g) for further administrative proceedings consistent with the Report and Recommendation. No objections to the Report and Recommendation have been lodged and the time for filing objections has expired.

CONCLUSION

After examining the record, this Court has determined that the Report and Recommendation

is not subject to attack for plain error or manifest injustice. Therefore,

(1) The Court adopts the Report and Recommendation for the reasons stated therein;

(2) Plaintiff's Motion for Judgment on the Pleadings is **GRANTED**;

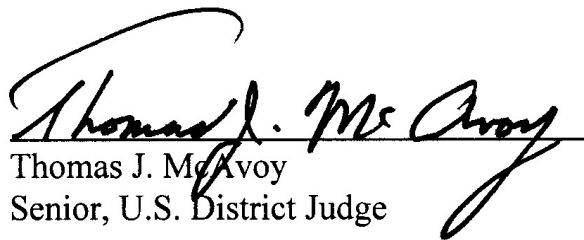
(3) Defendant's Motion for Judgment on the Pleadings is **DENIED**;

(4) The decision of the Commissioner is **REVERSED**, and

(5) The case is **REMANDED** to the Commissioner pursuant to sentence four of 42 U.S.C. § 405 (g) for further administrative proceedings consistent with the Report and Recommendation.

IT IS SO ORDERED.

Dated: December 22, 2011


Thomas J. McAvoy
Senior, U.S. District Judge